S T A T E O F N E W Y O R K

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2011-2012 Regular Sessions

I N A S S E M B L Y

January 19, 2011

Introduced by M. of A. CLARK -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to the siting of solid waste management facilities

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Paragraphs (a) and (b) of subdivision 1 of section 27-0107 of the environmental conservation law, paragraph (a) as amended by chapter 88 of the laws of 1996 and paragraph (b) as added by chapter 70 of the laws of 1988, are amended to read as follows:

(a) A planning unit [may undertake and complete a timely process leading to] SHALL DEVELOP a local solid waste management plan for such unit for at least a ten-year period. For purposes of this section and section 27-0109 of this [article] TITLE, "planning unit" shall mean a county, two or more counties acting jointly, a local government agency or authority established pursuant to state law for the purposes of managing solid waste, any city located in the county of Nassau, or two or more other municipalities which the department determines to be capable of implementing a regional solid waste management program.

(b) The local solid waste management plan shall:

(i) characterize the solid waste stream to be managed in the planning period. THIS CHARACTERIZATION SHALL INCLUDE PROJECTED CHANGES IN WASTE VOLUME OVER THE TEN-YEAR PLANNING PERIOD ATTRIBUTABLE TO CHANGING POPULATIONS, INCREASED REGIONAL RECYCLING, REGIONAL WASTE REDUCTION EFFORTS AND OTHER FACTORS;

(ii) assess [existing and alternate proposed solid waste management programs and facilities] DISPOSAL CAPACITY AVAILABLE IN EXISTING FACILITIES WITHIN THE PLANNING UNIT OR CAPACITY AVAILABLE TO THE PLANNING UNIT THROUGH CONTRACTUAL ARRANGEMENTS, AND FOR EACH YEAR IN THE TEN-YEAR PLANNING PERIOD, IDENTIFY PROJECTED SURPLUSES OR DEFICIENCIES IN WASTE DISPOSAL CAPACITY AVAILABLE TO THE PLANNING UNIT;

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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(iii) IDENTIFY AND ASSESS SPECIFIC OPTIONS FOR ADDRESSING PROJECTED DEFICIENCIES IN DISPOSAL CAPACITY DURING THE TEN-YEAR PLANNING PERIOD, INCLUDING RECYCLING, WASTE REDUCTION AND REUSE, COMPOSTING, AND RESOURCE RECOVERY AND LAND DISPOSAL. THIS ASSESSMENT SHALL INCLUDE THE FEASIBILITY OF DEVELOPING ADDITIONAL WASTE MANAGEMENT AND DISPOSAL CAPACITY WITHIN THE REGION AND THE ACCESSIBILITY OF WASTE MANAGEMENT AND DISPOSAL CAPACITY OUTSIDE OF THE REGION, GIVING PRIORITY TO FACILITIES WITHIN NEW YORK STATE. THIS ASSESSMENT SHALL ALSO INCLUDE THE ANNUAL COSTS OF PROVIDING FOR ADEQUATE WASTE MANAGEMENT AND DISPOSAL CAPACITY, AND AN ASSESSMENT OF POTENTIAL REVENUE FEE STRUCTURES TO MEET THOSE COSTS;

(IV) address to the maximum extent practicable the comments and views expressed by concerned governmental, environmental, commercial and industrial interests and the public on the waste reduction, recycling, reuse and disposal alternatives;

[(iv)] (V) INCLUDE A PLAN AND TIMETABLE FOR EVALUATING, SELECTING AND IMPLEMENTING MEASURES FOR ADDRESSING PROJECTED DEFICIENCIES IN DISPOSAL CAPACITY;

(VI) identify the parties with responsibility to implement each element of the plan and the steps which must be undertaken by each;

[(v) set forth a timetable for implementing the plan;

(vi)] (VII) describe the participation in the preparation of the plan of each municipality which has chosen to participate in such preparation; and

[(vii)] (VIII) describe (A) measures undertaken by the municipalities participating in the planning unit to secure participation of neighboring jurisdictions, (B) the limitations, if any, imposed by the proposed plan on solid waste management alternatives available to such neighboring jurisdictions, and (C) alternatives which would be available if a local solid waste management plan including such jurisdictions were prepared. Specific written suggestions received from neighboring jurisdictions shall be summarized and reflected in the plan.

S 2. The environmental conservation law is amended by adding a new section 27-0709 to read as follows:

S 27-0709. CRITERIA FOR SITING SOLID WASTE MANAGEMENT FACILITIES.

1. ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION, NO PERSON SHALL COMMENCE THE PREPARATION OF A SITE FOR, OR BEGIN THE CONSTRUCTION OF, A SOLID WASTE MANAGEMENT FACILITY IN THE STATE WITHOUT HAVING FIRST OBTAINED A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NECESSITY FROM THE STATE SOLID WASTE MANAGEMENT FACILITY SITE REVIEW BOARD.

2. THE COMMISSIONER SHALL, AFTER INVESTIGATION AND OPPORTUNITY FOR PUBLIC COMMENT AND WITHIN SIX MONTHS FROM THE EFFECTIVE DATE OF THIS SECTION, PUBLISH CRITERIA FOR SITING SOLID WASTE MANAGEMENT FACILITIES UPON WHICH A DETERMINATION OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NECESSITY SHALL BE BASED. THE COMMISSIONER SHALL ALSO WITHIN SIX MONTHS FROM THE EFFECTIVE DATE OF THIS SECTION PROMULGATE REGULATIONS PRESCRIBING THE FORM AND CONTENT OF APPLICATIONS FOR A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NECESSITY TO CONSTRUCT A SOLID WASTE MANAGEMENT FACILITY.

3. THE CRITERIA ISSUED PURSUANT TO SUBDIVISION ONE OF THIS SECTION FOR THE SITING OF SOLID WASTE MANAGEMENT FACILITIES SHALL INCLUDE:

(A) THE CONSISTENCY OF THE APPLICATION WITH THE PLAN ADOPTED PURSUANT TO SECTION 27-0103 OF THIS ARTICLE;

(B) THE CONSISTENCY OF THE APPLICATION WITH ANY LOCALLY ADOPTED SOLID WASTE MANAGEMENT PLAN, INCLUDING THE EXTENT TO WHICH A PROPOSED FACILITY ADDRESSES DISPOSAL CAPACITY DEFICIENCIES IDENTIFIED IN SUCH PLANS;

(C) THE EXTENT TO WHICH THOSE MUNICIPALITIES THAT WILL UTILIZE THE PROPOSED FACILITY HAVE EVALUATED POSSIBLE WASTE MANAGEMENT SITES WITHIN THEIR JURISDICTIONS;

(D) THE NATURE OF THE PROBABLE ENVIRONMENTAL IMPACT CAUSED BY THE FACILITY, INCLUDING SPECIFICATION OF THE PREDICTABLE ADVERSE EFFECTS ON THE NATURAL ENVIRONMENT AND ECOLOGY, PUBLIC HEALTH AND SAFETY, SCENIC, HISTORIC, CULTURAL AND RECREATIONAL VALUE, WATER AND AIR QUALITY, WILDLIFE AND AN EVALUATION OF MEASURES TO MITIGATE ADVERSE EFFECTS;

(E) THE NATURE OF THE ENVIRONMENTAL BENEFITS LIKELY TO BE DERIVED FROM SUCH FACILITY, INCLUDING THE RESULTANT DECREASE IN RELIANCE UPON EXISTING SOLID WASTE DISPOSAL FACILITIES WHICH DO NOT COMPLY WITH APPLICABLE LAWS AND REGULATIONS, THE DECREASE IN RELIANCE ON SOLID WASTE MANAGEMENT CAPACITY OUTSIDE OF NEW YORK STATE, AND A REDUCTION IN FUEL CONSUMPTION AND VEHICLE EMISSIONS RELATED TO LONG-DISTANCE TRANSPORTATION OF SOLID WASTE; AND

(F) THE ECONOMIC BENEFITS LIKELY TO BE DERIVED FROM SUCH FACILITY, INCLUDING BUT NOT LIMITED TO A REDUCTION IN EXISTING COSTS FOR THE DISPOSAL OF SOLID WASTES, IMPROVEMENT TO THE STATE'S ABILITY TO RETAIN AND ATTRACT BUSINESS AND INDUSTRY DUE TO PREDICTABLE AND STABLE SOLID WASTE DISPOSAL COSTS AND AVAILABILITY, MAINTENANCE OF THE COMPETITIVENESS OF THE STATE'S SOLID WASTE INDUSTRY AND ANY ECONOMIC BENEFITS WHICH MAY ACCRUE TO THE MUNICIPALITY IN WHICH THE FACILITY IS TO BE LOCATED.

S 3. Section 27-0711 of the environmental conservation law, as added by chapter 399 of the laws of 1973 and renumbered by chapter 425 of the laws of 1977, is amended to read as follows:

S 27-0711. Local laws, ordinances and regulations.

Any local laws, ordinances or regulations of any governing body of a county, city, town or village which are not inconsistent with this title or with any rule or regulation which shall be promulgated pursuant to this title shall not be superseded by it, and nothing in this title or in any rule or regulation which shall be promulgated pursuant to this title shall preclude the right of any governing body of a county, city, town or village to adopt local laws, ordinances or regulations which are not inconsistent with this title or with any rule or regulation which shall be promulgated pursuant to this title provided, however, THAT NO MUNICIPALITY MAY, EXCEPT AS EXPRESSLY AUTHORIZED BY THE BOARD ESTABLISHED PURSUANT TO SECTION 27-0713 OF THIS TITLE, REQUIRE ANY APPROVAL, CONSENT, PERMIT, CERTIFICATE OR OTHER CONDITION INCLUDING CONFORMITY WITH LOCAL ZONING OR LAND USE LAWS AND ORDINANCES REGARDING THE OPERATION OF A SOLID WASTE MANAGEMENT FACILITY WITH RESPECT TO WHICH A CERTIFICATE HAS BEEN GRANTED IN ACCORDANCE WITH SECTION 27-0713 OF THIS TITLE, AND FURTHER PROVIDED, HOWEVER, that the exercise of such right by a county shall relate only to the area thereof outside any city, village or area of any town outside the village or villages therein during such time as such city, village or town has local laws, ordinances or regulations consistent with this title or with any rule or regulation which shall be promulgated pursuant to this title. Any local laws, ordinances or regulations of a county, city, town or village which comply with at least the minimum applicable requirements set forth in any rule or regulation promulgated pursuant to this title shall be deemed consistent with this title or with any such rule or regulation, EXCEPT AS PROVIDED HEREIN.

S 4. The environmental conservation law is amended by adding two new sections 27-0713 and 27-0714 to read as follows:

S 27-0713. SITING SOLID WASTE MANAGEMENT FACILITIES.

1. THERE IS HEREBY ESTABLISHED A SOLID WASTE MANAGEMENT FACILITY SITE REVIEW BOARD TO BE COMPOSED OF THE COMMISSIONERS OF ECONOMIC DEVELOPMENT, ENVIRONMENTAL CONSERVATION, HEALTH, AND TRANSPORTATION, THE SECRETARY OF STATE, AND FOUR AD HOC MEMBERS APPOINTED BY THE GOVERNOR, TWO OF WHOM MUST BE RESIDENTS OF THE PLANNING UNIT IN WHICH THE PROPOSED SOLID WASTE MANAGEMENT FACILITY IS TO BE LOCATED. THE FOUR AD HOC MEMBERS SHALL BE EMPLOYEES OF THE STATE FOR PURPOSES OF SECTION SEVENTEEN OF THE PUBLIC OFFICERS LAW. THE TERM OF THE AD HOC MEMBERS SHALL CONTINUE UNTIL A FINAL DETERMINATION HAS BEEN MADE IN THE PARTICULAR PROCEEDING FOR WHICH THEY WERE APPOINTED. FIVE OF THE PERSONS ON THE BOARD SHALL CONSTITUTE A QUORUM FOR THE TRANSACTION OF ANY BUSINESS OF THE BOARD, AND THE DECISION OF FIVE MEMBERS OF THE BOARD SHALL CONSTITUTE ACTION OF THE BOARD. IN ADDITION TO THE REQUIREMENTS OF THE PUBLIC OFFICERS LAW, NO PERSON SHALL BE ELIGIBLE TO BE AN APPOINTEE OF THE GOVERNOR TO THE BOARD WHO HOLDS ANOTHER STATE OR LOCAL OFFICE. THE GOVERNOR SHALL APPOINT THE CHAIRMAN OF THE BOARD AND THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION SHALL MAKE AVAILABLE TO THE BOARD DEPARTMENTAL STAFF IN ORDER TO SUPPORT THE BOARD IN CARRYING OUT ITS RESPONSIBILITIES.

2. THE SOLID WASTE MANAGEMENT FACILITY SITE REVIEW BOARD IS EMPOWERED TO:

(A) ISSUE CERTIFICATES OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NECESSITY FOR SOLID WASTE MANAGEMENT FACILITIES. A CERTIFICATE FOR A SOLID WASTE MANAGEMENT FACILITY MAY BE ISSUED ONLY PURSUANT TO THIS ARTICLE; AND

(B) DEVELOP NON-BINDING ASSESSMENTS OF INCREASED PUBLIC EXPENDITURES TO BE CAUSED BY SOLID WASTE MANAGEMENT FACILITIES, FACILITATE SETTLEMENTS ON PAYMENTS BY FACILITY OWNERS/OPERATORS TO OFFSET INCREASED PUBLIC EXPENDITURES, AND TO CONVENE ARBITRATION PANELS FOR THE PURPOSE OF ESTABLISHING FAIR AND EQUITABLE HOST COMMUNITY FEES PAYABLE TO AFFECTED MUNICIPALITIES AND DISTRICTS.

3. AN APPLICANT FOR A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NECESSITY SHALL SUBMIT ITS APPLICATION TO THE COMMISSIONER OF THE DEPARTMENT. UPON RECEIPT OF A COMPLETE APPLICATION, THE COMMISSIONER SHALL CONVENE THE SOLID WASTE MANAGEMENT FACILITY SITE REVIEW BOARD ESTABLISHED BY THIS SECTION. SUCH APPLICATION SHALL BE SUBMITTED IN ACCORDANCE WITH THE FOLLOWING PROCEDURE:

(A) ON OR BEFORE FIFTEEN CALENDAR DAYS AFTER THE RECEIPT OF SUCH APPLICATION, THE DEPARTMENT SHALL MAIL WRITTEN NOTICE TO THE APPLICANT AS TO WHETHER OR NOT SUCH APPLICATION IS COMPLETE. IF THE APPLICATION IS NOT COMPLETE, THE PROVISIONS OF SECTION 70-0109 OF THIS CHAPTER SHALL BE APPLICABLE. IF, OR WHEN, THE APPLICATION IS COMPLETE, THE DEPARTMENT SHALL, CONCURRENT WITH NOTIFICATION TO THE APPLICANT, SO NOTIFY THE COMMISSIONER SO THAT HE MAY CONVENE THE SOLID WASTE MANAGEMENT FACILITY SITE REVIEW BOARD.

(B) IMMEDIATELY UPON DETERMINING THAT AN APPLICATION IS COMPLETE, THE DEPARTMENT SHALL CAUSE A NOTICE TO BE PUBLISHED IN THE NEXT AVAILABLE ENVIRONMENTAL NOTICE BULLETIN WHICH SHALL NOT BE LATER THAN TEN CALENDAR DAYS AFTER THE DATE OF SUCH NOTICE AND SHALL PROVIDE NOTICE TO THE CHIEF EXECUTIVE OFFICER OF EACH MUNICIPALITY IN WHICH THE PROPOSED PROJECT IS TO BE LOCATED, AND SHALL DIRECT THE APPLICANT TO PROVIDE SUCH REASONABLE NOTICE TO THE PUBLIC AS THE DEPARTMENT DEEMS APPROPRIATE. SUCH NOTICE SHALL, AT A MINIMUM, INCLUDE PUBLICATION IN AT LEAST TWO NEWSPAPERS HAVING A GENERAL CIRCULATION IN THE VICINITY IN WHICH THE PROPOSED FACILITY IS PROPOSED TO BE LOCATED.

(C) ON OR BEFORE FIFTEEN CALENDAR DAYS AFTER THE DEPARTMENT DETERMINES THAT THE APPLICATION IS COMPLETE THE COMMISSIONER SHALL CONVENE THE SOLID WASTE MANAGEMENT FACILITY SITE REVIEW BOARD.

(D) THE COMMISSIONER SHALL APPOINT A HEARING OFFICER WHO SHALL CONDUCT AN ADJUDICATORY PUBLIC HEARING UPON THE APPLICATION. SUCH HEARING SHALL COMMENCE AFTER FORTY CALENDAR DAYS BUT BEFORE SIXTY CALENDAR DAYS AFTER THE SOLID WASTE MANAGEMENT FACILITY SITE REVIEW BOARD IS CONVENED.

(E) MUNICIPALITIES IN WHICH THE PROPOSED FACILITY WOULD BE LOCATED SHALL HAVE FORTY DAYS AFTER THE CONVENING OF THE SITE REVIEW BOARD TO (I) CONCUR WITH THE SITE IDENTIFIED BY THE PERMIT APPLICANT OR (II) OBJECT TO THE ESTABLISHMENT OF A FACILITY OF THE KIND DESCRIBED BY THE APPLICANT BECAUSE ITS APPROVAL WOULD RESULT IN SUCH A CONCENTRATION OF SOLID WASTE MANAGEMENT FACILITIES IN THE MUNICIPALITY OR IN THE AREA IN PROXIMITY TO THE SITE SELECTED THAT THE NATURE AND CHARACTER OF THE AREAS WITHIN THE MUNICIPALITY WOULD BE SUBSTANTIALLY ALTERED. IN THE EVENT THE MUNICIPALITY OBJECTS TO ESTABLISHMENT OF A FACILITY IN THE MUNICIPALITY BECAUSE TO DO SO WOULD RESULT IN SUCH A CONCENTRATION OF WASTE MANAGEMENT FACILITIES THAT THE NATURE AND CHARACTER OF AREAS WITHIN THE MUNICIPALITY WOULD BE SUBSTANTIALLY ALTERED, THE SITE REVIEW BOARD SHALL MEET WITHIN FIFTEEN DAYS OF RECEIPT OF SUCH AN OBJECTION TO RESOLVE THE ISSUE. IN REVIEWING ANY SUCH OBJECTION, THE BOARD SHALL CONSIDER THE NEED FOR SUCH A FACILITY IN THE MUNICIPALITY AND IN THE SOLID WASTE PLANNING REGION IN WHICH THE MUNICIPALITY IS LOCATED AND THE EXISTING CONCENTRATION OF SUCH FACILITIES IN THE MUNICIPALITY OR IN THE AREA IN PROXIMITY TO THE SITE PROPOSED BY THE PERMIT APPLICANT. THE SITE REVIEW BOARD SHALL SUSTAIN THE OBJECTION IF IT DETERMINES THAT THE NATURE AND CHARACTER OF THE AREA IN WHICH THE FACILITY IS TO BE BASED WOULD BE SUBSTANTIALLY ALTERED BECAUSE OF THE CONCENTRATION OF SOLID WASTE MANAGEMENT FACILITIES RESULTING FROM THE ESTABLISHMENT OF THE PROPOSED FACILITY. THE BOARD SHALL MAKE SUCH A DETERMINATION WITHIN THIRTY DAYS OF THE HEARING.

(F) THE SOLID WASTE MANAGEMENT FACILITY SITE REVIEW BOARD SHALL RENDER A DECISION, BASED UPON THE RECORD, EITHER GRANTING THE APPLICATION, DENYING IT, OR GRANTING IT UPON SUCH TERMS, CONDITIONS, LIMITATIONS OR MODIFICATIONS THEREOF AS THE BOARD DEEMS APPROPRIATE. THE BOARD SHALL BASE ITS DECISION UPON WHETHER OR NOT THE PROPOSED FACILITY IS CONSISTENT WITH THE STATE SOLID WASTE MANAGEMENT PLAN ADOPTED BY THE DEPARTMENT PURSUANT TO SECTION 27-0103 OF THIS ARTICLE AND ANY LOCALLY ADOPTED SOLID WASTE MANAGEMENT PLAN, WHETHER OR NOT SITING THE FACILITY IS CONSISTENT WITH THE CRITERIA ESTABLISHED BY SECTION 27-0107 OF THIS ARTICLE AND AS TO WHETHER OR NOT THERE EXISTS A NEED FOR THE PROPOSED FACILITY.

(G) THE BOARD SHALL MAKE THE FINAL DETERMINATION ON AN APPLICATION UPON THE RECORD MADE BEFORE THE HEARING OFFICER, AFTER RECEIVING BRIEFS FROM THE PARTIES TO THE HEARING AND EXCEPTIONS TO THE RECOMMENDED DECISION OF THE HEARING OFFICER AND AFTER HEARING SUCH ORAL ARGUMENTS AS THE BOARD SHALL DETERMINE TO BE NECESSARY. THE CHAIRMAN OF THE BOARD SHALL MAIL ITS DECISION TO THE APPLICANT, TO THE DEPARTMENT, AND TO ALL PARTIES TO THE HEARING ON OR BEFORE SIXTY CALENDAR DAYS AFTER RECEIPT BY THE BOARD OF A COMPLETE RECORD, AS THAT TERM IS DEFINED IN PARAGRAPHS (A) THROUGH (E) OF SUBDIVISION ONE OF SECTION THREE HUNDRED TWO OF THE STATE ADMINISTRATIVE PROCEDURE ACT, OR WITHIN SIXTY DAYS OF MAKING A DETERMINATION ON AN OBJECTION ENTERED BY A MUNICIPALITY THAT ESTABLISHMENT OF THE PROPOSED FACILITY IN THE MUNICIPALITY WOULD RESULT IN SUCH A CONCENTRATION OF SOLID WASTE MANAGEMENT FACILITIES THAT THE NATURE AND

CHARACTER OF AREAS WITHIN THE MUNICIPALITY WOULD BE SUBSTANTIALLY ALTERED.

(H) THE PROVISIONS OF ARTICLE 70 OF THIS CHAPTER SHALL APPLY TO APPLICATIONS PURSUANT TO THIS TITLE, TO THE EXTENT SUCH PROVISIONS ARE NOT INCONSISTENT HEREWITH.

4. APPLICATIONS FOR A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NECESSITY SHALL BE ACCOMPANIED BY A FEE OF ONE HUNDRED THOUSAND DOLLARS FOR A REQUEST THAT PERTAINS TO THE SITING OF A LANDFILL OR AN ENERGY RESOURCE RECOVERY FACILITY WITH PLANNED DISPOSAL CAPACITY OF TWO THOUSAND TONS PER DAY OR GREATER, FIFTY THOUSAND DOLLARS FOR A REQUEST THAT PERTAINS TO THE SITING OF A LANDFILL OR AN ENERGY RESOURCE RECOVERY FACILITY WITH PLANNED DISPOSAL CAPACITY OF LESS THAN TWO THOUSAND TONS PER DAY, OR TEN THOUSAND DOLLARS FOR A REQUEST THAT PERTAINS TO THE SITING OF A SOLID WASTE MANAGEMENT FACILITY OTHER THAN A LANDFILL OR AN ENERGY RESOURCE RECOVERY FACILITY.

THIS FEE SHALL BE RECEIVED BY THE DEPARTMENT AND DISBURSED AT THE BOARD'S DIRECTION TO PROVIDE FUNDING FOR MUNICIPAL AND OTHER LOCAL PARTIES AS PROVIDED IN THIS SECTION. ANY MONEYS REMAINING IN THE FUND AFTER THE BOARD HAS ISSUED ITS DECISION AND AFTER ALL RELATED PROCEEDINGS ARE COMPLETED AND THE TIME FOR APPLYING FOR JUDICIAL REVIEW HAS EXPIRED SHALL BE RETURNED TO THE APPLICANT.

5. MUNICIPAL AND OTHER PARTIES (EXCEPT A MUNICIPALITY WHICH IS AN APPLICANT) MAY APPLY TO AND RECEIVE FROM THE BOARD FUNDING TO DEFRAY REASONABLE EXPENSES INCURRED BY SUCH PARTIES FOR EXPERT WITNESSES AND CONSULTANT SERVICES IN CONNECTION WITH THEIR PARTICIPATION IN PROCEEDINGS BEFORE THE BOARD OR IN PROCEEDINGS RELATED TO THE ISSUANCE OF ANY PERMIT OR APPROVAL FOR THE FACILITY. THE BOARD SHALL ASSURE THAT SUCH FUNDS ARE MADE AVAILABLE ON AN EQUITABLE BASIS AND IN A MANNER WHICH FACILITATES BROAD PUBLIC PARTICIPATION.

S 27-0714. COMPENSATION FOR SOLID WASTE MANAGEMENT FACILITY HOST COMMUNITIES.

1. UPON ISSUANCE OF A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NECESSITY BY THE SOLID WASTE MANAGEMENT FACILITY SITE REVIEW BOARD, THE BOARD SHALL PREPARE A NON-BINDING ASSESSMENT OF ANY INCREASE IN PUBLIC EXPENDITURES LIKELY TO BE INCURRED BY ANY MUNICIPALITY OR DISTRICT WITHIN WHICH THE FACILITY IS LOCATED THAT IS ATTRIBUTABLE TO THE FACILITY'S OPERATION. THE BOARD SHALL ALSO MAKE RECOMMENDATIONS FOR OTHER OPERATING CONDITIONS OR RESTRICTIONS THAT, BASED ON THE RECORD, MAY BE WARRANTED TO ALLEVIATE ADVERSE IMPACTS ON AFFECTED COMMUNITIES RESULTING FROM THE OPERATION OF THE FACILITY. THE ASSESSMENT OF INCREASED PUBLIC EXPENDITURES AND THE RECOMMENDED CONDITIONS AND RESTRICTIONS MAY SERVE AS THE BASIS FOR SETTLEMENT BETWEEN THE FACILITY OWNER/OPERATOR AND THE MUNICIPALITIES AND DISTRICTS IN WHICH THE FACILITY IS LOCATED AND WHICH WILL INCUR INCREASED PUBLIC EXPENDITURES OR POTENTIALLY INCUR OTHER ADVERSE EFFECTS DUE TO THE OPERATION OF SUCH A FACILITY.

2. IN THE EVENT THAT A SETTLEMENT ON HOST COMMUNITY FEES AND OTHER OPERATING CONDITIONS AND RESTRICTIONS NECESSARY TO ALLEVIATE ADVERSE IMPACTS ON AFFECTED COMMUNITIES CANNOT BE ACHIEVED AMONG THE FACILITY OWNER/OPERATOR AND THE AFFECTED MUNICIPALITIES AND DISTRICTS, ANY PARTY TO THE SETTLEMENT MAY SUBMIT A REQUEST TO THE BOARD TO CONVENE A PROCESS OF BINDING ARBITRATION TO SETTLE OUTSTANDING ISSUES RELATING TO SUCH FEES AND OTHER OPERATING CONDITIONS AND RESTRICTIONS. THE ARBITRATION PANEL SHALL BE COMPRISED OF INDEPENDENT PRIVATE ARBITRATORS, AND SHALL HAVE RELEVANT ARBITRATION BACKGROUND AND EXPERIENCE RELEVANT TO THE ASSESSMENT OF FINANCIAL IMPACTS. AN ARBITRATION PANEL SHALL BE SELECTED

FOR INDIVIDUAL SOLID WASTE MANAGEMENT FACILITIES AND SHALL CONSIST OF THREE MEMBERS, SELECTED AS FOLLOWS:

(A) ONE ARBITRATOR SHALL BE SELECTED BY THE BOARD.

(B) ONE ARBITRATOR SHALL BE SELECTED BY THE APPLICANT.

(C) ONE ARBITRATOR SHALL BE SELECTED UPON MUTUAL AGREEMENT BY THE AFFECTED MUNICIPALITIES.

3. WITHIN THIRTY DAYS OF ITS APPOINTMENT, THE ARBITRATION PANEL SHALL SCHEDULE A HEARING ON THE OUTSTANDING ISSUES RELATING TO HOST COMMUNITY FEES AND OTHER OPERATING CONDITIONS AND RESTRICTIONS NECESSARY TO ALLEVIATE ADVERSE IMPACTS ON AFFECTED COMMUNITIES. THE ARBITRATION PANEL SHALL ISSUE ITS DECISION WITHIN NINETY DAYS OF ITS APPOINTMENT.

4. COMPENSATION TO A MUNICIPALITY OR DISTRICT PURSUANT TO THIS SECTION MAY INCLUDE BUT NEED NOT BE LIMITED TO OR EXEMPLIFIED BY THE FOLLOWING PAYMENTS:

(A) IN THE EVENT THAT THE FACILITY WILL BE LOCATED ON PROPERTY WHICH IS EXEMPT FROM LOCAL PROPERTY TAXATION BY VIRTUE OF PUBLIC OWNERSHIP THEREOF, NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A SUM EQUAL TO THE AMOUNT WHICH WOULD ANNUALLY BE DUE IF THE LAND UPON WHICH SUCH FACILITY IS LOCATED AND ANY IMPROVEMENTS THERETO WERE ASSESSED AND TAXED AS REAL PROPERTY SUBJECT TO LOCAL REAL PROPERTY TAXATION;

(B) PAYMENTS TO DEFRAY ANY INCREASE IN PUBLIC EXPENDITURES BY SUCH MUNICIPALITY OR DISTRICT CAUSED BY THE FACILITY'S OPERATION; AND

(C) ANY OTHER COMPENSATION THE BOARD SHALL DETERMINE TO BE FAIR AND EQUITABLE UNDER THE CIRCUMSTANCES.

5. ANY DECISION REACHED BY THE PANEL SHALL BE BINDING ON ALL PARTIES TO THE DECISION. ANY PARTY TO THE DECISION MAY PETITION THE BOARD TO MODIFY THE DECISION OF THE PANEL UPON A SHOWING OF A MATERIAL CHANGE IN THE FACTS KNOWN TO THE PARTIES TO THE SETTLEMENT AT THE TIME IT WAS ENTERED INTO. THE BOARD MAY MODIFY THE SETTLEMENT TO REFLECT THESE CHANGED FACTS.

6. JUDICIAL REVIEW OF THE PANEL DECISION ON THE IMPOSITION OF HOST COMMUNITY FEES IS LIMITED TO A SHOWING OF FRAUD BY A PARTY TO THE DECISION OR AN ABUSE OF DISCRETION BY THE PANEL, OR BOTH.

S 5. This act shall take effect immediately.